

STATE ALLOCATION BOARD

1130 K Street, Suite 400
Sacramento, CA 95814
<http://www.dgs.ca.gov/opsc>



Date: May 27, 2003

To: Interested Parties

Subject: **NOTICE OF THE STATE ALLOCATION BOARD IMPLEMENTATION COMMITTEE MEETING**

Notice is hereby provided that the State Allocation Board Implementation Committee will hold a meeting on Friday, June 6, 2003 (9:30 am - 3:30 pm) at the State Capitol, Room 447, Sacramento, CA.

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. SAB/OPSC Processes for Lease-Lease Back Projects
3. Continuation High, Community Day and County Community Schools Classroom Loading and Funding Methods
4. Charter Fund Program Review
5. SAB Implementation Committee Correspondence Process

Any interested person may present public testimony or comments at this meeting regarding the issues scheduled for discussion. Any public input regarding unscheduled issues should be presented in writing, which may then be scheduled for a future meeting. For additional information, please contact Portia Jacobson at (916) 445-3159.

A handwritten signature in black ink, appearing to read "Bruce B. Hancock", with a long horizontal flourish extending to the right.

BRUCE B. HANCOCK
Chairperson

BBH:LM:pj

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**State Allocation Board
IMPLEMENTATION COMMITTEE
PENDING ITEMS LIST**

June 6, 2003

A. FUTURE ITEMS

- Facilitation of a separate meeting for Overcrowding vs. Growth
- Best Practices

B. SUSPENDED ITEMS

- No items at this time

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<http://www.dgs.ca.gov/opsc>**Implementation Committee
2003 MEETING CALENDAR****Tuesday, January 7, 2003**

US Bank Plaza

980 9th Street, 2nd Floor, Conf. Rm. A, B & C

Sacramento

Friday, February 7, 2003

US Bank Plaza

980 9th Street, 2nd Floor, Conf. Rm. A, B & C

Sacramento

Friday, March 7, 2003

US Bank Plaza

980 9th Street, 2nd Floor, Conf. Rm. A, B & C

Sacramento

Friday, April 4, 2003

US Bank Plaza

980 9th Street, 2nd Floor, Conf. Rm. A, B & C

Sacramento

Friday, May 2, 2003

Department of Education

1430 N Street, Board Room

Sacramento

Friday, June 6, 2003

State Capitol – Room 447

Sacramento

Wednesday, July 2, 2003

Department of Education

1430 N Street, Board Room

Sacramento

Friday, August 1, 2003

Department of Education

1430 N Street, Board Room

Sacramento

Friday, September 5, 2003

Department of Education

1430 N Street, Board Room

Sacramento

Friday, October 3, 2003

Department of Education

1430 N Street, Board Room

Sacramento

Friday, November 7, 2003

Sacramento -TBD

Friday, December 5, 2003

Department of Education

1430 N Street, Board Room

Sacramento

Meeting times are scheduled from 9:30 am to 3:30 pm with a 1-hour lunch break.

Meeting times, dates and locations are subject to change.

Meeting locations will be forthcoming.

**State Allocation Board
Implementation Committee
June 6, 2003**

LEASE LEASE-BACK AGREEMENTS

This matter is being presented to the State Allocation Board for two purposes:

- ❑ Advise the SAB that projects constructed under lease Lease-back agreements are being recommended for reimbursement and to obtain SAB concurrence that that is a permissible use of state bond funds, and
- ❑ Propose amendments to current regulations necessary to clarify requirements for funding particular to lease lease-back arrangements.

Discussion

The Use of Education Code Section 17406 (Lease Lease-Back) as a contracting method.

Education Code Section 17406 provides a mechanism whereby a district may let district real property to a development entity without competitive bidding if the developer will construct a school facility and lease it back to the district. An increasing number of districts are using this approach to construct new facilities and modernize existing facilities. The districts then request State funding for the purpose of buying out the lease and acquiring the facility.

School districts which have used the Lease, Lease-back project delivery method cite the following as reasons for selecting it over the traditional design, bid, build approach:

- ❑ Avoid competitive bidding
Many districts consider the competitive bidding process as required under the Public Contracts Code to be problematic. The process leaves them with little control over the selection of the contractor for the project, and places them in financial jeopardy if the contractor selected is unwilling or unable to perform the construction as planned. The L, L-B process allows the district to select the contractor / developer based on criteria other than cost.
- ❑ Guaranteed price
The district is able to negotiate a fixed price for the lease and, if necessary, the purchase price of the project. Unanticipated costs are the responsibility of the contractor / developer, not the school district.
- ❑ Team approach
Districts have expressed the opinion that L, L-B allows a team approach to the construction of school facilities. The district, developer and contractor all have an interest in a project completed on time and in budget.
- ❑ Known contractor
Contractors can be selected on the basis of their record of success, recommendations from previous clients and financial strength.
- ❑ No experienced staff at district
Many districts do not have experience with large construction projects. The responsibility for co-ordination of the project, obtaining required approvals, and

Discussion (cont.)

project scheduling become the contractor / developers, who have demonstrated experience in similar school construction projects.

- ❑ Value engineering opportunities
- ❑ Contractors and subcontractors come from other industries; not the same as usually bid on school projects

Although the law in EC 17406 is clear in allowing districts to proceed on lease lease-back arrangements without competitive bidding, there may be reasons to proceed cautiously when using lease lease-back arrangements. Primary among these is summarized in the Supreme Court majority opinion in *The City of Los Angeles v. Offner* where the following was stated:

"It has been held generally in the numerous cases that have come before this court involving leases and agreements containing options to purchase that if the lease or other agreement is entered into in good faith and creates no immediate indebtedness for the aggregate installments therein provided for but, on the contrary, confines liability to each installment as it falls due and each year's payment is for the consideration actually furnished that year, no violence is done to the constitutional provision. If, however, the instrument creates a full and complete liability upon its execution, or if its designation as a 'lease' is a subterfuge and is actually a sales contract in which the 'rentals' are installment payments on the purchase price for the aggregate of which and immediate and present indebtedness or liability exceeding the constitutional limitation arises against the public entity, the contract is void."(underlining added)

Thus, while the benefits anticipated by districts using lease lease-back may be many, the provisions of EC 17406 may only be used in specific circumstances. It appears to the Office of Public School Construction that some of these circumstances may not truly exist in all lease lease-back contracts.

- ❑ The lease lease-back must be entered into in 'good faith'. Presumably that means that both parties to the agreement intend that a lease arrangement will exist and will be implemented.
- ❑ The lease arrangement may not be a subterfuge. Many districts openly admit that they are using lease lease-back contracts for the perceived benefits listed earlier.
- ❑ The agreement may not create an immediate indebtedness beyond each yearly installment. Some agreements require 'pre-lease' or 'rental' in one form or another which amount to the full cost of the facility. It appears that an immediate indebtedness has been created by the agreement which is being satisfied.
- ❑ The District must own the site on which the project will be constructed. Under EC 17402, the district owns the site if it holds title, has an option to purchase, or is acquiring the site through eminent domain. An arrangement whereby the option to purchase the site is with the developing entity could be construed as a subterfuge to avoid EC 17407. That section allows lease lease-back on

Discussion (cont.)

property owned by others, but specifically requires competitive bidding of the agreement.

To date, the OPSC has not taken a position on these potential issues, believing that defense of the use of EC 17406 rests with the district using the process. However, if a lease lease-back agreement is found by the courts to be inappropriate or to have been a subterfuge as defined by the Supreme Court, the agreement is void. If the agreement is voided, then it would appear that funds were released in conflict with the SFP law and that a 'material inaccuracy' occurred. In that case, the SAB will not be able to avoid involvement even though it was not a party to the decision to use a lease lease-back arrangement.

OPSC Policy Positions

Over a period of several years, the OPSC has responded to individual school district questions on issues related to the use of the provisions of EC 17406. These responses have begun to form the office's informal policy on lease lease-back project delivery methods. The responses are summarized below by general topic:

- The District must have title to the site on which the project will be constructed at the time that the apportionment is approved by the SAB.
- The lease agreement must contain the following provisions or information:
 - The value of the lease.
 - A provision that the title to the improvements on the site shall vest with the District upon completion of the project.
 - A provision that the lease agreement shall terminate within 180 days of the filing of a notice of completion or occupancy of the project by the District, whichever occurs first.
- State bond funds may not be used to make lease or rental payments.

Staff believes that these policies need to be approved by the Board and formalized through the regulatory process.

Proposals

Clarify that lease lease-back agreements meeting the requirements of EC 17406 may be used as a means of constructing or modernizing school facilities otherwise eligible under the SFP. Add regulation section 1859.23 as follows:

1859.23 SFP Application for Funding of Property Leased Under the Provisions of Education Code Section 17406.

In addition to meeting the requirements of Sections 1859.20 and 1859.21 or

Proposals (cont.)

1859.120, a district may receive SFP funds for facilities that have been constructed or modernized, or will be constructed or modernized, under a lease agreement pursuant to Education Code 17406 provided the following are met:

- (a) At the time the funding application is approved by the State Allocation Board, the district has title to the site or meets one of the following:
 - (1) the site acquisition is in final escrow,*
 - (2) the district is leasing the site for a term specified in 1859.22 (b), (1), (2) or (3) and the property lease is not connected to or a part of the lease lease-back agreement created under EC 17406.*
 - (3) the district has filed an action in eminent domain and has received an order of immediate possession of the site.**
- (b) A lease provision that title to the improvements on the site shall vest with the district upon completion of the project.*
- (c) A lease provision that the lease agreement shall terminate within 180 days ~~from the filing of a notice of completion or occupancy of the project by the district, whichever occurs first.~~ Of a funding approval by the Board or occupancy of any portion of the project, whichever is later.*
- (d) The Application for Funding is filed with the Board not later than occupancy by the district of any part of the project.*
- (e) No funds from state bonds are used for lease or rental payments on the project.*

Strike Section 1859.30(i) (5) and substitute the following:

(5) Where the funding was not approved under this Chapter and the district has not taken occupancy of the classroom.

Legal References

17072.35. A grant for new construction may be used for any and all costs necessary to adequately house new pupils in any approved project, and those costs may only include the cost of design, engineering, testing, inspection, plan checking, construction management, site acquisition and development, evaluation and response action costs relating to hazardous substances at a new or existing schoolsite, demolition, construction, acquisition and installation of portable classrooms, landscaping, necessary utility costs, utility connections and other fees, equipment including telecommunication equipment to increase school security, furnishings, and the upgrading of electrical systems or the wiring or cabling of classrooms in order to accommodate educational technology. A grant for new construction may also be used to acquire an existing government or privately owned building, or a privately financed school building, and for the necessary costs of converting the government or privately owned building for public school use.

17400. (a) Any school district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this article.

(b) As used in this article, "building" includes each of the following:

- (1) One or more buildings located or to be located on one or more sites.
- (2) The remodeling of any building located on a site to be leased pursuant to this article.
- (3) Onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased.
- (4) The permanent improvement of school grounds.

(c) As used in this article, "site" includes one or more sites, and also may include any building or buildings located or to be located on a site.

17401. As used in this article "lease or agreement" shall include a lease-purchase agreement.

17402. Before the governing board of a school district enters into a lease or agreement pursuant to this article, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for the building that have been approved pursuant to Sections 17280 to 17316, inclusive. A district has a site available for the purposes of this section under any of the following conditions:

(a) If it owns a site or if it has an option on a site that allows the school district or the designee of the district to purchase the site. Any school district may acquire and pay for an option containing such a provision.

(b) If it is acquiring a site by eminent domain proceedings and pursuant to Chapter 6 (commencing with Section 1255.010) of Title 7 of Part 3 of the **Code** of Civil Procedure, the district has obtained an order for possession of the site, and the entire amount deposited with the court as the probable amount of compensation for the taking has been withdrawn.

(c) In the case of a district qualifying under Section 17410, if it is leasing a site from a governmental agency pursuant to a lease having an original term of 35 years or more or having an option to renew that, if exercised, would extend the term to at least 35 years.

17403. The term of any lease or agreement entered into by a school district pursuant to this article shall not exceed 40 years.

17404. Sections 17455 to 17480, inclusive, shall not apply to leases made pursuant to this article.

17405. Any lease or agreement shall be subject to the following requirements:

(a) A building or structure that is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365). A building or facility used by a school district under a lease or lease-purchase agreement into which neither pupils nor teachers are required to enter or that would be excluded from the definition of "school building," as contained in Section 17368, shall not be considered to be a "school building" within the meaning of Section 17283.

(b) Subdivision (a) shall not apply to trailer coaches used for classrooms or laboratories if the trailer coaches conform to the requirements of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety **Code**, and the rules and regulations promulgated thereunder concerning mobilehomes, are not expanded or fitted together with other sections to form one unit greater than 24 feet in width, are used for special educational purposes, and are used by not more than 12 pupils at a time, except that the trailer coaches may be used by not more than 20 pupils at a time for driver training purposes.

(c) The site on which a leased relocatable structure is located shall be owned by the school district, or shall be under the control of the school district pursuant to a lease or a permit. "Relocatable structure" is any structure that is designed to be relocated.

(d) For purposes of interconnection of fire alarms, buildings leased for 24 months or less shall be subject to Section 809 of the Uniform Building **Code** until applicable regulations proposed by the State Fire Marshal are adopted as part of Title 24 of the California **Code** of Regulations.

(e) Notwithstanding any other provision of law, this section shall become operative on September 30, 1997.

17406. (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

(b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

17407. The governing board of any school district may enter into an agreement with any person, firm, or corporation under which that person, firm, or corporation shall construct, or provide for the construction of, a building to be used by the district upon a designated site and lease the building and site to the district. The instrument shall provide that the title to the building and site shall vest in the district at the expiration of the lease, and may provide the means or method by which the title to the building and site shall vest in the district prior to the expiration of the lease, and shall contain such other terms and conditions as the governing board of the district deems to be in the best interest of the district.

The agreement entered into shall be with the lowest responsible bidder who shall give the security that any board requires. The board may reject all bids. For the purpose of securing bids the board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no paper, then in some paper of general circulation circulated in the county, a notice calling for bids, stating the proposed terms of the agreement and the time and place where bids will be opened.

17424. The governing board of the school district shall obtain the general prevailing rate of per diem wages from the Director of the Department of Industrial Relations for each craft, classification or type of workman needed for the construction of the building and shall specify in the resolution and in the notice, required by Section 17417, or in the resolution required by Section 17418 and in the lease or agreement made pursuant to this article, what the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality is for each craft, classification or type of workmen needed for the construction of the building. The holidays upon which such rate shall be paid need not be specified by the governing board, but shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workmen employed on the project.

Any agreement or lease entered into pursuant to this article shall require that such general prevailing rates will be paid. It shall also require that work performed by any workman employed upon the project

in excess of eight hours during any one calendar day shall be permitted only upon compensation for all hours worked in excess of eight hours per day at not less than 1 1/2 times the basic rate of pay. There may also be included in leases or agreements entered into pursuant to this article any other requirements with respect to matters related to the subject of this section which the governing board deems necessary or desirable.

17425. The provisions of this article prevail over any provisions of law which conflict therewith.

**State Allocation Board
Implementation Committee
June 6, 2003**

**COMMUNITY DAY, COUNTY COMMUNITY DAY, COUNTY COMMUNITY AND
CONTINUATION HIGH SCHOOL REPORT**

BACKGROUND

In March 2003, the Office of Public School Construction (OPSC) released the *Review of the Funding Methods for Continuation High, Community Day and County Community Schools* report on behalf of the Department of General Services (DGS). This report was in response to Assembly Bill 695, Education Code Section (ECS) 17072.17, which directed the DGS, in conjunction with the California Department of Education (CDE), the Department of Finance (DOF), and the Legislative Analyst's Office (LAO), to review the method of funding the construction and modernization of school facilities for the following alternative education programs:

- Continuation High Schools
- Community Day Schools
- County Community Schools
- County Community Day Schools

FUNDING OF SUPPORT FACILITIES FOR ALTERNATIVE EDUCATION SCHOOLS

One of the report's recommendations is to consider developing a new school allowance for Alternative Education Schools. The OPSC presented at its April and May 2003 Implementation Committee meetings, a copy of the proposed cost and square footage chart, Regulation Section 1859.73.3, *New Construction Additional Grant for Support Facilities for Alternate Education Schools*, that will be used to determine the square footage necessary for support facilities as well as the cost per square foot for each support facility that is contained in a project (see Attachment A). This chart was prepared with the assistance of the CDE, utilizing CDE educational specifications, and replacement square footage/costs based on the Facility Hardship Chart under Regulation 1859.82(b).

The funding example is included on Attachment B, and reflects input received at the previous committee meeting. The example demonstrates the calculation of the support facilities for two different sized schools. The first example illustrates a 6 classroom middle, and the second is a 15 classroom continuation high school.

In addition, at the May 2003 Implementation Committee meeting, the OPSC provided a funding example utilizing the proposed Support Facilities Chart in order to solicit feedback to ensure that the funding chart addresses the needs of alternative education schools. Input received from the audience and the committee was to consider providing funding for existing Alternative Education Schools that would like to add classrooms in the future which would provide the funding necessary to expand or add to the existing support facilities. Attachment C (forthcoming) provides an example of a two classroom middle school that is adding additional classrooms, which will demonstrate the methodology for calculating the additional New Construction funding for the support facilities based on Regulation 1859.73.3.

PROPOSAL

1. Change the current loading standards to 18 pupils per classroom.
2. Adopt a new method to fund support facilities for both community day and continuation high schools.
3. Amend/adopt regulations.

RECOMMENDATIONS

1. Amend Regulation Section 1859.2 to include the new loading standards.
2. Amend Regulation Section 1859.83(c).
3. Add Regulation Section 1859.73.3, New Construction Additional Grant for Support Facilities for Alternate Education Schools.
4. Amend Regulation Sections 1859.77.2 and 1859.77.3 to allow Alternative Education Schools to utilize Use of Grants (new construction) requests.

ATTACHMENT A

Adopt Section 1859.73.3 as follows:

New Construction Additional Grant for Support Facilities for Alternative Education Schools

Authorization for New Construction Additional Grants for Support Facilities for which the final plans and specifications for the project were accepted by the DSA on or before June 26, 2003 may request the following:

(a) If the project is for a new alternative education school on a site with no existing school facilities the district is eligible for a New Construction grant based on the number of classrooms in the project and shall not exceed the following:

	Column 1	Column 2	Column 3
Support Facility	Project contains 1 or 2 classrooms	Project(s) contains 3 to 10 classrooms	Project(s) contains 11 or more classrooms
Multipurpose Facility or Gymnasium (includes food service)	2,500 sq. ft.	6.3 sq. ft. per pupil minimum 4,000 sq. ft.	6.3 sq. ft. per pupil minimum 7,200 sq. ft.
Toilet	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.	5 sq. ft. per pupil minimum 300 sq. ft.
School Administration	1,000 sq. ft. Combined Total	4 sq. ft. per pupil minimum 800 sq. ft.	4 sq. ft. per pupil plus 800 sq. ft.
Counseling offices, small group areas, and/or conference rooms		1,000 sq. ft.	1,000 sq. ft.
Library/Media Space		4.3 sq. ft. per pupil plus 600 sq. ft.	4.3 sq. ft. per pupil plus 600 sq. ft.

(b) If the project is for additional classroom(s) to an existing Alternative Education School, constructed under the provision of 1859.73.3(a) and the combined number of classrooms exceeds 2 classrooms, the additional support facilities grant provided for this project pursuant to Section (b) shall be calculated as follows:

- (1) Based on the pupils in the project for the additional classrooms, calculate the New Construction additional grant by utilizing Column 2, Section (a) above.
- (2) Subtract the sum of the New Construction additional grant determined in (1) above from the sum of the additional grants received pursuant to 1859.73.3(a).

(c) If the project is for additional classroom(s) to an existing Alternative Education School, constructed under the provision of 1859.73.3(a) and the combined number of classrooms exceeds 10 classrooms, the additional support facilities grant provided for this project pursuant to Section (b) shall be calculated as follows:

- (1) Based on the pupils in the project for the additional classrooms, calculate the New Construction additional grant by utilizing Column 3, Section (a) above.
- (2) Subtract the sum of the New Construction additional grant determined in (1) above from the sum of the additional grants received pursuant to 1859.73.3(a) and (b).

The grant amount provided shall be \$173.30 per square foot for Toilet Facilities and \$96.30 per square foot for all other facilities. The amounts shown will be adjusted annually in the manner prescribed in Section 1859.71.

Note: Authority cited: Section 17072.17, Education Code and 17071.25, Education Code

Amend Section 1859.83. Excessive Cost Hardship Grant.

(c) Excessive Cost to Construct a New School Project.

With the exception of Alternative Education Schools, if the project is for a new elementary, middle or high school on a site with no existing school facilities the district is eligible for a New Construction Excessive Cost Hardship Grant equal to the difference in the amount provided by the New Construction Grant and the amount shown below, based on the number of classrooms, including classrooms used for Individuals with Exceptional Needs, in the project:

Class-rooms in project	Elementary School	Middle School	High School
1	\$160,000	\$674,000	\$1,466,000
2	\$377,000	\$756,000	\$1,525,000
3	\$566,000	\$840,000	\$1,885,000
4	\$717,000	\$932,000	\$2,205,000
5	\$842,000	\$1,028,000	\$2,428,000
6	\$1,021,000	\$1,125,000	\$2,651,000
7	\$1,202,000	\$1,222,000	\$2,874,000
8	\$1,341,000	\$1,328,000	\$3,046,000
9	\$1,341,000	\$1,440,000	\$3,184,000
10	\$1,577,000	\$1,553,000	\$3,321,000
11	\$1,577,000	\$1,666,000	\$3,459,000
12	\$1,660,000		\$3,585,000
13			\$3,709,000
14			\$3,833,000
15			\$3,958,000
16			\$4,082,000
17			\$4,207,000
18			\$4,331,000
19			\$4,455,000
20			\$4,580,000
21			\$4,704,000
22			\$4,828,000

The amounts shown above will be adjusted annually in the manner prescribed in Section 1859.71.

Any Excessive Cost Hardship Grant provided under this subsection for a new school project shall be offset against future New Construction Grant funds provided for that same school. The amount of the offset shall be determined by dividing the additional New Construction Grant pupil request by the difference in the New Construction Grant pupil request when the initial Excessive Cost Hardship Grant was made and 325 for an elementary school, 324 for a middle school, and 621 for a high school project and multiplying the quotient by the Excessive Cost Hardship Grant funds provided under this subsection for that project.

Amend Section 1859.77.3 as follows:

Amend Section 1859.77.3. Use of New Construction Grant Funds for Projects Accepted by the DSA after January 22, 2003.

New Construction Grant funds and any other funds provided by these Regulations shall be expended as set forth in Education Code Section 17072.35; and may also be utilized for the cost incurred by the district for the development and implementation of remedial action plan approved by the DTSC pursuant to Education Code Section 17213; and for the costs incurred by the district directly or through a contract with a third party provider for the initiation and enforcement of a labor compliance program pursuant to Labor Code Section 1771.7.

Authorization for use of New Construction Grants for which the final plans and specifications for the project were accepted by the DSA after January 22, 2003 may be requested as follows:

- (a) A district may request new construction grants that exceed the capacity of the project based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations if the project is to construct a multipurpose, gymnasium and/or library at an existing site that does not have an existing or adequate facility of the type being requested when all of the following is met:
 - (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
 - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
 - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
 - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
 - 1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
 - 2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom.
- (2) The existing school site was not constructed under the SFP.
- (3) The proposed project includes no more than eight classrooms.
- (4) Grant requests, above 100 percent of the number of pupils to be housed, based on Special Day Class pupil eligibility are only permitted under this subsection (a) when building a Special Day Class facility.
- (5) For purposes of this section to determine if an existing facility is inadequate, the existing square footage is less than 60 percent of the square footage necessary for the current CBEDS for the site plus the Net School Building Capacity of the proposed project as calculated pursuant to Section 1859.82(b), with the exception of Alternative Education Schools refer to Section 1859.73.3.
- (6) The maximum excess pupil amount being requested for this type of Use of Grants request, is calculated by the following:
 - (A) Multiply the current CBEDS for the site plus the Net School Building Capacity for the proposed project by the square footage for the type of facility being requested, pursuant to Section 1859.82(b).
 - (B) Multiply the product in (1)(A) above by the per square foot grant amount for multipurpose, gymnasium or library facilities pursuant to Section 1859.82(b).
 - (C) Divide the product in (1)(B) above by the New Construction Grant amount for the project grade level, rounded up to the nearest whole number.
- (b) A district may request new construction grant eligibility determined at a different grade level than the proposed project that does not exceed the capacity of the project, unless the project includes a request as indicated in Section 1859.77.3(a), based on loading standards pursuant to Education Code Section 17071.25(a)(2) and any loading standards adopted by the SAB by these regulations when all of the following is met:
 - (1) The district must adopt a school board resolution that has been discussed at a public hearing at a regularly scheduled meeting of the district's governing board on a date preceding the application filing that includes the following:
 - (A) An acknowledgement that funds for the purposes of housing the excess pupils are being diverted to another project.
 - (B) An acknowledgement that the State has satisfied its obligation, pursuant to Section 1859.50, to house the pupils receiving grants in the project.
 - (C) A plan outlined in the resolution that identifies how the district has housed or will house the pupils receiving grants in the project in school buildings as defined in Education Code Section 17368. The plan must certify one of the following methods:
 - 1. The district will construct or acquire facilities for housing the pupils with funding not otherwise available to the SFP as a district match within five years of project approval by the SAB, and the district must identify the source of the funds; or
 - 2. The district will utilize higher district loading standards providing the loading standards are within the approved district's teacher contract and do not exceed 33:1 per classroom; or
 - 3. The pupils requested from a different grade level will be housed in classrooms at an existing school in the district which will have its grade level changed, to the grade level requested, at the completion of the proposed SFP project.
 - (2) Only New Construction Grant eligibility for grades Kindergarten through 12 can be requested pursuant to this subsection (b), and the district must use its New Construction Grant eligibility, pursuant to subsection (b), in the following order:
 - (A) At the grade level of the proposed project, if available.

- (B) At the lowest grade level other than the proposed project, if available.
- (C) At the next highest grade level other than the proposed project.
- (c) A district may request new construction eligibility based on the SFP Regulation Section 1859.77.2 or 1859.77.3, as appropriate, in place as of the date of a local bond election provided that clear language was included in the local bond that specifically identified the proposed project, and provided that the project meets all laws and regulations of the SFP.

If a district wishes to amend its Approved Application to include or increase its Use of Grants request after the submittal to the OPSC, the district must request in writing that the Approved Application be withdrawn and removed from the OPSC workload list. The resubmitted application will receive a new processing date by the OPSC.

The New Construction Grant amount provided shall be determined based on the grant amount provided in Education Code Section 17072.10 for the grade level that generated the eligibility and any New Construction Additional Grant or New Construction Excessive Cost Hardship Grant the district qualifies for as provided by these regulations.

Note: Authority cited: Section 17072.13, Education Code.

Reference: Sections 17072.13 and 17072.35, Education Code.

Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the Act:

“Academic Achievement” means to improve one’s ability to engage in academic endeavors and to accomplish study in core curriculum areas such as reading, writing, mathematics, fine arts, science, vocational education, technology, history or social science.

“Act” means the Leroy F. Greene School Facilities Act of 1998.

“Adjacent” means the HSAAs that will make up the Super HSAA are adjoining, touching, or share a common geographical boundary.

“Alternative District Owned Site” means a district owned site that is deemed available for the project by the California Department of Education.

“Alternative Education ” means community day, county community, county community day, and continuation high schools with a loading standard of 18 pupils per classroom.

“Application” means a request pursuant to the Act to receive an eligibility determination and/or funding for a school project.

“Apportionment” shall have the meaning set forth in Education Code Section 17070.15(a).

“Approved Application(s)” means a district has submitted the application and all documents to the Office of Public School Construction that are required to be submitted with the application as identified in the General Information Section of Forms SAB 50-01, *Enrollment Certification/Projection*, (Revised 01/03); SAB 50-02, *Existing School Building Capacity*, (Revised 09/02); SAB 50-03, *Eligibility Determination*, (Revised 01/03); and SAB 50-04, *Application for Funding*, (Revised 02/03), as appropriate, and the Office of Public School Construction has completed and accepted a preliminary approval review pursuant to Education Code Section 17072.25(a).

“Approved Application for Joint-Use Funding” means a district has submitted an *Application for Joint-Use Funding*, Form SAB 50-07 (Revised 01/03), including all required supporting documents as identified in the General Information Section of that Form, to the OPSC and the OPSC has accepted the application for processing.

ATTACHMENT B

FUNDING EXAMPLE

Alternative Education Facilities (18 Pupils per Classroom)

Base Grant Calculations	6 Classrooms Middle School Grant	Total Base Grant	15 Classrooms High School Grant	Total Base Grant
Pupils X Classrooms X Base Grant for Total Base Grant	108	\$667,116	270	\$2,183,220
	6 Classrooms		15 Classrooms	
Cost for Support Facilities	Square Footage	Additional Grants	Square Footage	Additional Grants
Multipurpose or Gymnasium (Includes food service) (\$107 X Sq. Ft.)	4,000	\$428,000	7,200	\$770,400
Toilet (\$195 X Sq. Ft.)	540	\$105,300	1,350	\$263,250
School Administration (\$107 X Sq. Ft.)	800	\$85,600	1,880	\$201,160
Counseling offices, small group areas and/or conference rooms (\$107 X Sq. Ft.)	1,000	\$107,000	1,000	\$107,000
Library/Media Space (\$107 X Sq. Ft.)	1,065	\$113,955	1,761	\$188,427
Classroom Space (1,030 Sq. Ft. X Classrooms)	6,180		15,450	
** Average "Excessive Costs"		\$123,572		\$304,503
*** Average "Site Development Costs"		\$215,232		\$530,371
* 50% TOTALS	13,585	\$1,845,774	28,641	\$4,548,331
* 100% TOTALS	13,585	\$3,691,548	28,641	\$9,096,663

FOOTNOTES:

- * Totals DO NOT include site acquisition costs.
- ** Average cost of "Excessive Costs" based upon projects from Proposition 1A and Proposition 47.
- *** Average cost of "Site Development Costs" based upon projects from Proposition 1A and Proposition 47.

**State Allocation Board
Implementation Committee
June 6, 2003**

CHARTER SCHOOL FACILITIES PROGRAM DISCUSSION

BACKGROUND

On January 22, 2003, the State Allocation Board (SAB) approved amendments to the School Facility Program (SFP) regulations to incorporate changes brought on by Assembly Bill (AB) 14. AB 14 creates a new pilot program that will allow for \$100 million in Proposition 47 funding for the new construction of facilities for charter schools. This program brings new changes to the SFP. For the first time it allows charter schools to access State facility funding directly or through the school district where the charter school is physically located and allow it to acquire a preliminary apportionment. Another aspect of the program is that the Office of Public School Construction (OPSC) will work with the California School Finance Authority (CSFA) in the approval process of an application.

The SAB and the OPSC's role in the charter school application and approval process will remain essentially the same as it is currently in the SFP. The CSFA will be responsible for determining if a charter school is financially sound and if the local matching share payment will be either lease payments or a cash contribution.

A provision in the law also requires that the OPSC and CSFA provide a joint report to the legislature by July 1, 2003. There are three components to this report:

- *Section One* - Implementation of this article includes a description of the projects funded.
- *Section Two* - Provides a description of this process whereby the board provides funding for charter school facilities.
- *Section Three* - Includes recommendations, if any, regarding statutory changes need to facilitate and streamline the process.

DISCUSSION

The OPSC has been collecting data from various correspondence received and meetings that occurred throughout the processing of the program. To further assist the OPSC in reviewing the adequacy of the amendments to the charter school program, we are soliciting comments and recommendations from Committee members and various stakeholders through discussion at this Committee meeting.

**State Allocation Board
Implementation Committee
June 6, 2003**

SAB IMPLEMENTATION COMMITTEE CORRESPONDENCE PROCESS

BACKGROUND

All correspondence addressed to the Chair receives a response. Additionally, the Office of Public School Construction staff coordinates responses with the Chair when it receives Implementation Committee related correspondence. Correspondence or documents related to specific items are provided to the Committee members with its agenda packets or at the meetings.

In January 2003, the Chair and Committee requested that a more formal process be put in place to address correspondence addressed to the SAB Implementation Committee. As a result, a proposal has been developed for discussion and input from the Committee.

PROPOSAL

To ensure timely coordination and response to Implementation Committee correspondence, the following process is proposed.

- The Executive Assistant to the Committee Chair will be responsible for coordinating the correspondence received.
- The Chair and staff will continue coordinating responses whenever they receive Implementation Committee related correspondence. All correspondence addressed directly to them will receive a response. The Committee members will be copied on those responses. The Executive Assistant to the Committee Chair will maintain an Implementation Committee correspondence log.
- Immediately upon receipt, other Committee members will fax a copy of Committee correspondence to the Chair's Executive Assistant; contact information is as follows:

Portia Jacobson
Executive Assistant
Office of Public School Construction
State Allocation Board
Phone: (916) 445-3159
Fax: (916) 324-0623

- The Chair's Executive Assistant will assist in coordinating responses to ensure that all letters receive a reply, as deemed appropriate.
- All others members are encouraged to reply to correspondence addressed directly to them as Implementation Committee members. If the correspondence is duplicated to all Committee members, the members are free to choose the best response method and are responsible for conveying that information to the Chair's Executive Assistant on a timely basis. If a member sends a reply, the Committee members will be copied on those responses. An advance copy will be faxed to the Chair's Executive Assistant.
- Letters, responses and documents will continue to be provided in the Committee agenda packets when associated with the indexed items. If the letters or documentations are received after the agenda is sent out, copies will be provided at the meeting.

RECOMMENDATION

Adopt the proposal as presented.